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The Bar Has a Voice; Use It

By W. H. Anderson, President Los Angeles Bar Association

BAITING THE BAR has always been a pleasant amusement with those who love an idle, thoughtless jest. Abusing it—heaping upon its broad and capable shoulders the blame for innumerable ills for which it is in no way responsible—has now come to be almost a national pastime. The current press deems it legitimate prey for every self-constituted newspaper crusader in the land and every muck-raking magazine. These multiplying attacks are not confined to abusing the lawyers themselves or the legal profession alone, but also take in the courts themselves and the general administration of justice; however, almost universally blaming the lawyers for every bad condition and for innumerable evils which exist in the imagination of their authors only.

Conscious of its general rectitude, and knowing that a vast majority of its members and the judges of the land, with but few exceptions, form a great bulwark for the best that is possible against the hosts of crime, greed and oppression, and for the maintenance of the best ideals of justice, the Bar has hesitated to lift its voice in legitimate protest against this vicious and growing propaganda of misrepresentation and unwarranted abuse to which it has been and is being subjected.

However, it has a voice—a mighty voice of great potentiality for truth and right reason; and the time is more than ripe for it to speak in no uncertain terms in its own just behalf.

Bar Is Bettering Conditions

Some of the things said against it are true, for no human institution is perfect; but every reasonable effort is being made by the co-ordinated work of State Governing Bars, the American Bar Association, local Bar Associations and organizations of the Judges themselves to better all of these matters of just criticism as far as it is reasonably possible to better them. Of the nature and extent of this great, active and useful work and of its growing accomplishment and hoped-for success, the public knows little or nothing, but should be fully informed.

The people are not easily fooled and do not often misjudge where the real facts are fully known.

As yet the public has been kept in the dark concerning these matters, and consequently has no knowledge of the extensive work which the organized Bar is doing to create a higher standard for admission to practice law, to eliminate unfit lawyers, to do away with shystering and all forms of illegal practice of the law, to aid the Courts in functioning with greater promptitude and better efficiency, and to bring about methods for a better selection of the Judges who administer the law.

The nature, character and extent of this nation-wide work should be made generally public.

Even in our own local Bar Association hundreds of its members of the highest type of learning and integrity, without compensation other than the reward which comes from well doing, are unselfishly and unstintedly giving their time and best efforts to bettering conditions in our own ranks wherever they need bettering, and to an intelligent study, and an attempt to improve the work of, our Courts, and to make justice more rapid, just and certain.

Of all of this the public knows practically nothing, and should be fully informed.

The Bar, by finding its voice and using it, can correct the evil impressions created against it by what is perhaps a well-intentioned but ill-informed press—impressions which, if not corrected, will soon find permanent lodgment in the public mind as truths, to the great detriment of our profession itself and to the even greater detriment of a misled public.

Bar Should Lift Its Voice

The Bar has the brains and the energy to make itself articulate. Its voice would not be as one crying in the wilderness, but could and should be as the voice of truth shouting from the housetops. It can reach every nook and cranny in the land. All that is necessary is the will to speak. It can no longer ignore the fact that it, along with the Courts, is under a heavy and unjust fire. It can no longer assume that the matter will blow over. Now is the time that it should present an organized front, not only capable of meeting, but of repelling the attack, by correcting its falsities with a true statement of the true condition of affairs, and the extent, and the extent only, of the Bar's responsibility even for those matters which merit criticism.

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PUBLIC RELATIONS OF THE LEGAL PROFESSION

IN a recent address Thomas Day Thatcher, President of the Association of the Bar of the City of New York, before the Boston Bar Association, made some suggestions to the Bar in general which merit reprinting for the benefit of lawyers.

"I am not here to discuss the New Deal in any of its aspects," said President Thatcher. "What I should like to consider with you is the fading influence of the Bar in public affairs, and how its influence may be restored. * * *

"What we lawyers need is not another Committee, or another survey," he said in referring to the crime situation, "we have too many unexecuted plans. We need action—political and administrative—which may not be had by filing reports of Bar Associations with the Legislature, or by passing resolutions. It is time to tell the Legislatures, the local authorities, the Chiefs of Police, The District Attorneys, and the Judges themselves, what must be done, and done promptly, if the people are to be safe in their homes and have justice in their courts. * * *

"The action of the American Bar Association in coordinating the activities of the State and Local Bar Associations in a nationwide effort to grapple with and solve the Crime Problem is heartening evidence of the determination of our profession to throw its whole influence behind practical measures for the effective enforcement of the criminal law. This can only be done through the local Associations, because while the problem is national in scope the remedies must be applied locally to conditions which are largely political and administrative in character. * * *

'But it is not alone by failing to accomplish these reforms that we have fallen in public esteem. Engrossed in the exacting responsibilities of successful practice, the leaders of the Bar have devoted too little of their time, their influence and their wisdom to the sort of public service which is fairly to be expected of them. At least it is so with many of us in New York, where some of the ablest lawyers have become exclusively identified in the public mind with the financial interests which they serve. In popular opinion such men are politically disqualified from public service, because it is believed that they will continue to serve their clients after taking public office. This is a grotesque conception of professional relations, and is grossly unfair to men whose integrity of mind and loyalty of purpose are above reproach. But there is no blinking the prevalence of this belief, and here again we accomplish little by condemning an opinion which prevails. The important inquiry is: How may the experience, the disinterested judgment, and the loyal service of such men be made available to the State and the Nation? * * *."

State Bar Doing Great Work

Aside from the general coordinated work of all legal associations, above referred to, and aside from the special efforts being given by our local Bar Association to the great work for the general good of the profession and the public, every fair-minded lawyer must acknowledge the effective work being done by our State Bar. It is capable of doing, and unquestionably will do, a great many more constructive things in the future. No one who has read them can help being impressed by the messages of its President, Mr. Wyckoff, in his recent articles in the State Bar Journal, on "The Administration of Justice." These messages of the State Bar President should have been given to every newspaper in the state as an example of the constructive program now being conducted by the organized State Bar. So, also, the news contained in the program of the State Bar's Committee on Administration of Justice should have been used as newspaper copy of profitable interest to the public.

Inform the Public

Some method should be adopted by the State Bar and also by our own Bar Association, for the purpose of legitimately giving to the public at large all proper news of what is being done by the lawyers of the state and the nation to remedy those evils which need remedying, and which the Bar is mistakenly charged with tolerating or wholly ignoring. Such news would not only be of interest to every thinking citizen, but would, in and of itself, tend most materially to right the evils complained of, and would certainly be most effective in counteracting the unwarranted abuse of the Bar.

Too Many Judges?

AGITATION FOR "JUDICIAL REFORM" DEMANDS THAT CONSTRUCTIVE INTELLECTS OF BENCH AND BAR DESIGN NEW JUDICIAL SYSTEM. SUGGESTIONS FOR A "NATURAL SYSTEM."

By William J. Palmer, Judge of the Superior Court

THE DEMAND for "judicial reform," though voiced by many who know not whereof they speak and by others whose cures would be worse than the disease, has behind it one factor of power with which it would be well not to trifle: the factor of truth. For this reason the cause will stand a great deal of error and yet make its voice heard. And for this reason, it would be well for the constructive intellects of bench and bar to bravely set about designing the new judicial system, lest the reform come from the outside and crystallize some, at least, of the ignorance of judicial function that prevails on the outside.

A legislative committee, I believe, is in existence now for the purpose of studying our local courts with a view to reducing the number of judges. A prominent assemblyman recently was quoted in the legal newspapers to the effect that the subject of judicial reform would be a conspicuous one in the next session of the Legislature, and these words were attributed to him:

> "Of utmost importance is the crying demand on the part of litigants and taxpayers for a complete revision of the entire judicial system of the state. This system, as it now exists, is antiquated, cumbersome, expensive, time-wasting and not at all in keeping with the modern trend in events."

No doubt these words express the opinion of many of our citizens. But whether they are one man's opinion or the thought of a million, the only important question is: Are they true? Contemplating now only the local Superior Court, of which I am an officer, and expressing only my personal thought, candor compels me to answer that "the system" is cumbersome, expensive and time-wasting. As to the charge of antiquity, I doubt if it could be sustained, for it strikes me that "the system," despite which our court hobbles through its work, is rather novel and runs contrary to ancient principles, the soundness of which have been proved by time.

ATTENTION TO EMPLOYERS!

HELP YOUR FELLOW MEMBERS! The office of the Association has on file applications for employment classified as follows:

Experienced practitioners seeking salaried positions;

Attorneys recently admitted seeking salaried positions;

Experienced and unexperienced attorneys who are willing to render services for desk space;

Attorneys seeking working arrangements that will permit of their taking care of their own clients;

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Unorganized Responsibility

I know of no other institution that could survive, let alone achieve a reasonable degree of efficiency, if it were wholly lacking in organized authority and responsibility as is the case with our local judiciary, through no fault of any of its members, but because of the system. Certainly no private business, no institution that has to meet competition and survive through the effectiveness of its own efforts, could succeed under such a condition.

We have fifty judges, each a king in his own right, no one under the authority or direction of another, no one under the leadership or guidance of another, each enjoying an autonomy that privileges him to determine his own working hours, his own manner of work, his own policies, his own period of vacation, his own efforts (if any) to improve the quality of his work, and of course his own rulings. We are a small army, every member of which is a general. We have no privates, corporals, lieutenants or majors. We have no structure of distributed, coordinated responsibility such as exists in every efficient organization for action. I am not overlooking the power of assignment vested in the Presiding Judge. That, however, is a very limited authority. It merely permits assignment without direction.

An Unnatural System

If we were serving a hundred million people, fifty judges would be too many, if all were on the same plane of authority, each autonomous, and the group had no organized responsibility. Fifty judges for one court are too many to elect or appoint under any system and they are too many to constitute an effective working unit in the absence of an hierarchy of delegated authority.

Nature, herself, would go to pieces under such a plan, and being wise, doesn't try it. She knows that effective organization comes from a decisive division of function and an orderly distribution of responsibility. Her macrocosm and her microcosm are marvels of organized, delegated function. Nothing is left to stand by itself alone. Everything is related, geared in, adjusted to, tuned with, something else. The atom has its responsibility of holding together its tiny universe of electrons. The molecule, by some mystic power, must sustain its combination of atoms, and if this thought were not merely illustrative, one might go on and revel in the ever-expanding realm of nature's interrelated mechanisms. Even the solar system, with all its space and power, has only about a sixth as many planets as we have judges in one court. And if nature, in all her wisdom, so limited the control and subordinates of the great and radiant sun, what does she think of a fifty-unit body without sun, moon—or "stars"—expected to be able to accomplish an effective piece of work!

A Suggestion

At this point I shall spend no time showing the specific ways in which the absence of organized responsibility in our court expresses itself in waste of time and energy, in expense and general inefficiency, because those things will be pointed out by comparison when I set forth the advantages of the natural organization I am about to suggest.

Let me pause here a moment to emphasize the fact that the statement of plan which follows is presented merely as a suggestion for thought and discussion. While some details are supplied in order to "picture" the plan effectively, let it be clear that I assume no arbitrary or oracular pose in limning the imagined structure. The principle of organization enunciated is either right or wrong. That principle is the thing I submit for the reader's cogitation. Should you accept it as sound, any logical mind could be entrusted with the task of detail design and the results could not be far wrong. That which follows, in other words, is an effort to point the way, and may it never be said that from the judiciary itself has come no constructive program for putting its own house in order and making it fit for the new day.

A Natural System

I propose that the Superior Court of Los Angeles County be composed of twelve executive judges, each to have the title "Judge of the Superior Court" and as many *associate judges* as may be needed from time to time to enable the court to accomplish its work with reasonable dispatch. By what manner the twelve judges would be selected is a question with which I am not here concerned. Each executive judge would appoint his own associates, to serve subject to the will of the appointing

judge—the number and personnel of such appointments to be confirmed by the Judicial Council. The twelve judges would act as a board of directors, administering the duties of the court, and would divide the work of the court among them. One of their number would be chosen by them as presiding judge or chief magistrate and he would be vested with managerial authority.

No precedent or tradition would stand in the way of his serving longer than one term should the majority of the executive judges desire him to do so. Three of the judges would be assigned to the Appellate Department, and among the other nine the remaining work of the court would be distributed. Each of these nine judges would be not only a judge but a departmental executive. Imagine the plight of a business executive who couldn't appoint his own aides and direct their work!

The judge would be the chief of his staff, composed of himself and his associates. He would order the hours of work of his associates and approve a schedule of vacations for himself and his associates; he would establish the policies to be followed by his staff; instruct his aides in the manner of holding court; be available for consultation with any assistant on any question that might arise; call staff meetings for general discussions of important and perplexing questions presented in the court of any of them; sit in with any associate to hear a motion or other matter should the proceeding be of unusual important or difficulty and the chief's presence desired—in general, he would manage his division of the court and his staff as a business executive manages the work of his organization. Each judge and his staff would constitute one department of the court and normally a case would remain to its conclusion and for all matters in the department where it originated.

Many Advantages

What are the advantages of the proposed system? They are many, each of importance, and all tending to the one desired end—a more efficient court.

First: The plan would make possible the full utilization of the wisdom, experience and ability of those who may now or hereafter be in the first rank of judicial qualification. It would make possible that utilization because whereas under the present system those judges are just independent judges with no power to train or develop other judges or direct their work, under the proposed plan they would be executives with authority to put into effect, not only through their own service but also through the work of their associates, their ideals, principles and methods of judicial administration. It often has been said that every great institution is but the lengthened shadow of some great individual. There is truth in that statement. The proposed plan would lengthen the shadow and extend the influence of the able judge.

Second: With three-fourths of the acting judges under direction, and responsible to a superior officer, nothing except the utter incompetence of the executive judge could stand in the way of a maximum of accomplishment.

Third: The plan would provide a method whereby the aspirant to judicial office could be trained for the task under the immediate counsel and guidance of an experienced teacher-judge, rather than be thrust alone into the full responsibilities of judicial duty as at present. What would happen to a business institution if there were no one to instruct and guide a new employee as he entered upon his duties? Yet we send men into the vitally important office of judge of the Superior Court without a soul having any responsibility for educating the new employee in his duties.

An Elastic Organization

Fourth: The system would have elasticity. The number of associate judges easily could be increased or reduced according to the needs of the calendar. No legislative action would be required, as at present, to give us a few more judges or to reduce the number. A new associate judge or two could be added without all the ballyhoo, wasted energy and political excitement now occasioned whenever the Legislature creates a new judicial office and the Governor takes on the task of filling it. The number of executive judges never would need to be changed.

Fifth: There would be no "pro tem" judges. The executive judge could appoint an associate judge just for a day or two or for the trial of a certain case. And

the temporary judge, rather than being alone, just another general in the army of generals, would be a part of the small staff headed by the judge, under whose direction and counsel the temporary judge would work.

Several Heads Better Than One

Sixth: While one judge would try a case, as at present, the litigant and lawyer would have, in a measure, the advantage of the knowledge and intelligence of all the judges in a department—the "chief" and his associates. The trial judge would have available to him the counsel and judgment of the other members of the staff to which he would belong. It would be considered perfectly proper for him to consult with them on perplexing questions of law, matters of procedure and judgment.

Seventh: Each of the twelve executive judges could be paid $12,000 a year, and the court could be run at less cost than at present. It is not necessary for me to here suggest what the compensation of the associate judges might be in order to make that statement true. Some of the work of the court does not call for super-ability. It would not be necessary to pay all associates the same. There might be a graduated scale of salary, depending on the nature of work entrusted and length of period of service. It should be borne in mind that the associate judge would have the benefit of the direction and counsel of his superior, and therefore should be able to deliver a higher quality of service with less native ability than would be required for the same type of service from one working independently. Furthermore, in guessing the number of needed associates, we must not overlook the strong probability of increased efficiency following the installation of a system of organized authority and responsibility.

More Honor—More Attraction

Eighth: With only twelve executive judges, the position of Judge of the Superior Court would become one of much greater honor than attaches to the office at present. It would be a position worthy the ambition of the best of lawyers. To be one of twelve Superior Court judges for the far-reaching County of Los Angeles would be to have an honor of no small proportions. The position would take on an importance that never can be possible as long as there are fifty holding it. Add to the greater honor, the higher salary, and the office should attract some of the finest men of the profession. With the greater influence of the position it would become of such importance that much greater care would be used—would have to be used—in the selection than at present. "After all," we now say, "he is only one of fifty."

Ninth: But even with the necessity for greater care, the plan would simplify the problem of judicial selection, whatever the method, in making possible a concentration of thought and effort on only twelve positions.

Tenth: By having a case remain for all matters in the department where it originated, a vast amount of time would be saved that is now lost by conflict of view and decision and lack of cooperation and coordination among wholly independent judges.

Esprit De Corps

Eleventh: Under the plan each judge and his associates would become a closely-united corps of workers, aiding one another, steadying one another and building up an *esprit de corps* that would contribute significantly to the efficiency and character of all.

Twelfth: The plan conforms to human nature. We know that in almost any group of fifty persons there will be a wide variety of ability. They will not be on the same level of qualification and should not be kept there arbitrarily. We accomplish more in any organization when leaders lead and followers follow, when executives direct and cooperators cooperate.

Thirteenth: By concentrating responsibility for the administration of the court on only twelve persons, the public and the bar should be able to do what cannot now be done—direct the flowers of praise or point the finger of blame in some fairly definite direction for a good or poor record of accomplishment by the court.

The Bulletin received commendatory mention as to four different articles appearing in the January and February numbers, in the American Bar Association's "Bar Editors' Digest," which is sent to every bar publication throughout the country.

The Right of a Surety to Injunctive Relief from a Multiplicity of Actions Upon a Statutory Bond

By Arthur E. White, of the Los Angeles Bar

THE BULLETIN presents the above entitled article by Mr. White as the second in the series of papers whose authors were awarded prizes in the competition for legal articles recently sponsored by the Junior Barristers of the Los Angeles Bar Association. Mr. White received second prize. Other prize winning papers, as well as some of those receiving special mention, will be published from month to month.

THE LAWS of the State of California require every securities broker[1], real estate broker (until the 1933 amendment)[2] insurance broker,[3] collection agency,[4] employment agency,[5] personal property broker,[6] produce dealer,[7] deciduous fruit dealer,[8] and detective agency,[9] to file each year with the proper state official a surety bond in the penalty of from $1,000.00 to $5,000.00, to indemnify any person who suffers loss through the dishonesty or failure of any such person or agency to carry out its undertakings in the particular business. These bonds run to the state as obligee but any person damaged may bring an action for relief. Frequently, due to the collapse of the business or agency, or the absconding of the malefactor, numerous claims arise on a given bond, the total of which far exceeds the penalty thereof. In extreme cases, the number of claimants has exceeded two hundred fifty, and is frequently from five to fifteen. Actions are often filed for each claimant by different attorneys, in Justice's, Municipal and Superior Courts, sometimes in different counties.

The question arises, then, whether the surety (almost invariably a corporate surety) must bear the trouble, expense, and possibility of suffering total judgments in excess of the penalty of the bond, which result from this multiplicity of actions. May the surety bring an action in the nature of interpleader and secure an injunction against the prosecution of the separate actions and the filing of additional actions, thus indirectly forcing the claimants to come into the surety's action and seek their relief by means of cross-complaints? On what principles can such relief be granted?

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(1) Statutes 1917, Chap. 532, as amended: Statutes 1919, Chap. 148; Statutes 1921, Chaps. 597 and 658; Statutes 1923, Chap. 50; Statutes 1925, Chap. 447; Statutes 1927, Chap. 462; Statutes 1929, Chaps. 707, 738 and 861; Statutes 1931, Chap. 423; Statutes 1933, Chap. 898.

(2) Statutes 1919, Chap. 605, as amended: Statutes 1921, Chap. 751; Statutes 1923, Chap. 51; Statutes 1925, Chap. 341; Statutes 1927, Chaps. 262, 351, 415 and 537; Statutes 1929, Chap. 130; Statutes 1931, Chap. 601; Statutes 1933, Chaps. 96 and 691.

(3) Political Code, Sec. 633a4.

(4) Statutes 1927, Chap. 485, as amended: Statutes 1929, Chap. 678; Statutes 1931, Chap. 737; Statutes 1933, Chap. 930.

(5) Statutes 1913, Chap. 282, as amended: Statutes 1915, Chap. 551; Statutes 1923, Chaps. 412, 413 and 414; Statutes 1927, Chaps. 263, 264, 333 and 334; Statutes 1929, Chaps. 89 and 215; Statutes 1931, Chap. 827.

(6) Statutes 1909, Chap. 634, as amended: Statutes 1911, Chap. 490; Statutes 1931, Chap 273; Statutes 1933, Chap. 577.

(7) Agricultural Code, Chap. 6.

(8) Agricultural Code, Chap. 7.

(9) Statutes 1927, Chap. 885, as amended in Statutes 1933, Chap. 804.

Aggregate Liability

Some courts have held that the aggregate liability of the surety on such bonds as are described above is not limited to the penalty of the bond, but that *each claimant* may recover up to the amount of the penalty.[10] Applying this rule, the only ground for the injunctive relief would be the multiplicity of actions. Superficially, the provision of the Code of Civil Procedure that the prevention of a "multiplicity of judicial proceedings" is one of the grounds for an injunction[11] makes mere multiplicity sufficient. But what is "multiplicity"? Must all the actions arise out of the same facts and involve the same legal questions? Pomeroy believes they need not and, supported by a number of cases, he says:

> "Courts of the highest standing and ability have repeatedly interfered and exercised this jurisdiction, where the individual claims were not only legally separate, but were separate in time, and *each arose from an entirely separate and distinct transaction,* simply because there was a *community of interest* among all the claimants in the question at issue and in the *remedy.*"[12] (Italics ours.)

The above quotation takes us a long way from the traditional idea that this equitable jurisdiction is based on the prevention of repeated, successive or numerous actions by or against a single party on substantially the same facts. One case cited by Pomeroy in support of his view involves a situation almost identical with that under discussion, the claims against the bond being based on 150 different acts of embezzlement at various times.[13] A case not cited by Pomeroy in which multiplicity was the sole ground for relief, since there was no possibility of the surety suffering from any double recovery, is *United States Fidelity and Guaranty Co. vs. California Arizona Construction Co.*[14]

California Law Settled

However, the law of California on aggregate liability has just been settled by the very recent case of *Wiggins vs. Pacific Indemnity Co.*[15] holding that the aggregate liability to all claimants of the surety on a real estate broker's bond is limited to $2,000.00, the penalty of the bond. This important decision has two effects. It strengthens the "multiplicity" argument by making it certain that all claimants claim out of the same fund, *i. e.,* the penalty of the bond, and not each from a separate fund. This common fund thus may be said to become, in a sense, the "subject matter of the controversy" giving the claimants that "community of interest"[16] necessary to justify joining them as defendants and giving the surety equitable relief against them. Furthermore, this decision adds to the ground of multiplicity the further equitable grounds of the prevention of an inequitable distribution of the fund and of a possible excess recovery against the surety.

Equitable Relief

The prevention of an inequitable distribution of the fund (*e. g.,* by payment to the claimant who filed his action first, or secured his judgment first) is certainly not one of the established grounds for equitable relief. However, it is one which commends itself well to a court of equity, particularly in conjunction with other grounds. The above ground assumes that the surety could be compelled to pay some claimants in full and need pay the re-

(10) Salo vs. Pacific Coast Casualty Co., 163 Pac. 384 (Wash.) and Commercial St. Bank vs. Palmerton, 277 Pac. 389 (Wash.).

(11) Code of Civil Procedure, Sec. 526, par. 6 of first subsection.

(12) Pomeroy: Equity Jurisprudence, 4th Edit., Vol. 1, Sec. 269.

(13) Guffanti vs. National Surety Co., 196 N. Y. 452, 134 Am. St. Rep. 848, 90 N. E. 174. Also cited by Pomeroy are: Goldfield Consolidated Mines Co. vs. Richardson, 194 Fed. 198, and Cloyes vs. Middlebury Electric Co., 80 Vt. 109, 11 L. R. A. (N. S.) 693, 66 Atl. 1039.

(14) 186 Pac. 502 (Ariz.). As to multiplicity as sole ground for relief see also: Code of Civil Procedure, Sec. 526, par. 6 of first subsection; the early case of Smith vs. Smith, 148 Mass. 1; five pages of cases cited in Pomeroy: Equity Jurisprudence, 4th Edit., Vol. 1, note to Sec. 261.

(15) 75 C. A. D. 51, decided Sept. 27, 1933. See also Witter vs. Massachusetts Bonding Insurance Co., 247 N. W. 831 (Ia.).

(16) Pomeroy: Equity Jurisprudence, 4th Edit., Vol. 1, Sec. 269.

maining claimants only the remainder of the penalty, which may or may not be the law.[17] If this is not the law, then the surety would have to pay all claims in full and the other ground of a possible excess recovery against the surety comes into operation. This ground also is not one of the traditional grounds for equitable relief but certainly could be considered by a court in applying general principles of equity and fair dealing.

It is perfectly clear that the prerequisite for equity jurisdiction, inadequacy of the remedy at law, is present in these cases because the surety is helpless without the aid of an injunction which is, of course, obtainable only in equity.

It appears, therefore, that the only certain ground for equitable relief is the multiplicity of actions, and even that is subject to criticism as to whether we have here the proper type of multiplicity. However, the courts have not hesitated before such hurdles of mere theory, but have blithely hopped over them, with a quite understandable regard for the practical necessity of providing the surety some way out of its dilemma. Although such temporary injunctions have recently been granted with regularity by the Superior Court of Los Angeles County, at least, no appellate court of California has passed on the question. However, in similar or analogous cases, courts of other jurisdictions have granted relief.

Best Authority

The case of *American Surety Co. vs. Mills*[18] is probably the best authority for relief. Claims aggregating $90,000.00 were being made on a fidelity bond in the penalty of $50,000.00. The surety commenced an action in equity to enjoin execution on a judgment secured in the state court by a group of the claimants, to determine the amounts due each of the claimants, to prorate the penalty of the bond among the proper claimants and to enjoin the insurance commissioner of the state from annulling its license to do business in the state on account of its refusal to pay the judgment mentioned above. The court below granted the injunction against the insurance commissioner but refused to enjoin collection on the judgment. However, the court did not order payment of the judgment in full but only of the pro-rata share due the claimants holding the judgment, declaring such share to be $13,-614.00. This was ordered without any determination by the court of the amount due other claimants or the aggregate sum of valid claims. Therefore, the surety appealed demanding more complete relief.

The Circuit Court of Appeals held that complete relief as prayed for should be granted, saying:

> "We think equity had cognizance of the cause of suit, for the reason that the very nature of the suit itself demands relief which equity alone can afford, and there is no adequate remedy at law. The appellant, a surety on a bond in the penal sum of $50,000.00, could lawfully be required to pay no more than the penal sum so named. It was confronted with claims largely in excess of that amount, and it could obtain relief only by a decree for a pro-rata distribution of the fund for which it was liable, and this could only be done in a single suit in equity, to which all claimants might be made parties. In American Surety Co. v. Lawrenceville Cement Co., (C. C.) 96 Fed. 25, there was a large number of actions at law on a contractor's bond, and the aggregate amount of the claims exceeded the penalty of the bond. It was held that those facts entitled the surety to maintain a suit in equity, through which the fund in its hands might be equitably distributed. Cases illustrative of that rule are Thomas Laughlin Co. v. American Surety Co., 114 Fed. 627; 51 C. C. A. 247; United States v. Wells, (D. C.) 203 Fed. 146; Illinois Surety Co. v. United States, 212 Fed. 136; 129 C. C. A. 584; Illinois Surety Co. v. United States, 226 Fed. 665; 141 C. C. A. 421. In Illinois Surety Co. v. Mattone, 138 App. Div. 175, 122 N. Y. Supp. 929, the court said:
>
> 'The plaintiff, however, is liable in the aggregate only to the amount of its undertaking, and that amount constituted a fund for the payment of the creditors

(Continued on page 167.)

(17) See Commonwealth vs. City Tr. S. Dep. & Sur. Co., 73 Atl. 425 (Pa.) discussed infra.
(18) 232 Fed. 841, C. C. A. 9th Circ.

The Board of Trustees

COMMITTEE ON LEGAL AID

THE PRESIDENT recently recommended to the Board of Trustees that a committee be appointed, to be known as the Committee on Legal Aid, a general outline of the duties of the committee being suggested as follows:

"To act as a liaison between the Bar Association and any and all legal aid clinics established in the County; to keep informed as to the work of such clinics and to report to the Board of Trustees from time to time; to recommend to the Board such action as the latter may take, from time to time, to assist in legal aid work; to designate attorneys for appointment to the staff of each legal aid clinic established in the County, and to report such designations to the Board for confirmation, and upon such confirmation to see that the appointees are advised of such appointment and requested to undertake the work for such period as might be stated."

The Board voted that such a committee be appointed, and the president designated the following members to act: Kimpton Ellis, chairman; Henry Prince, C. E. McDowell, Arthur R. Smiley, and Kenneth Chantry, secretary.

COUNSEL FOR NIGHT COURT

Some time ago the Junior Barristers and members of the Board were requested to see that counsel was furnished to indigents appearing in the Night Court, and especially in felony cases.

This matter has had a great deal of attention, and J. Karl Lobdell reported that the committee interviewed a number of the judges, and found a difference of opinion among them as to the necessity of furnishing such counsel. In view of this difference of opinion among the Judges, and the fact that 80% of the cases show guilty pleas, and the further fact that only a percentage of the remaining 20% are in need of a Public Defender; and in consideration of the City Counsel having voted not to make an appropriation to cover the expenses involved, it was the consensus of opinion of the members of the Board that nothing further should be done, and that the matter be closed.

REVISION OF BY-LAWS

The following Committee on Revision of Constitution and By-Laws has been appointed: Loyd Wright, chairman; J. Karl Lobdell, vice-chairman; Hon. Clement L. Shinn, Robt. P. Jennings, Chas. R. Baird, B. J. Bradner, and Alex W. Davis.

SUSPENSION OF DELINQUENT MEMBERS

Article V, section 4 of the By-Laws provides as follows:

"Failure to Pay Dues. Any member failing to pay his annual dues within six months after the date when the same became due may be suspended by the Board of Trustees after notice, and shall only be reinstated upon payment of all dues or upon remission thereof by the Board of Trustees."

The delinquent members having had notice, it was voted by the Trustees that those members who have not paid their 1933 dues are suspended, effective Monday, February 8, 1934.

HOUSING FOR COUNTY LAW LIBRARY

The president has appointed a committee of five to be known as "Special Committee on Housing of Law Library," to take up the matter of arranging for adequate housing for the County Law Library. The committee which will carry on its work until further orders of the Board, is composed of the following members: Joe Crider, Jr., chairman; Alfred Barstow, Wm. A. Bowen, E. D. Lyman, and J. Karl Lobdell.

NEW MEMBERS

Lawrence E. Drumm
Herbert Sapper
Karl B. Rodi
Geo. R. Richter, Jr.
Edward M. Raskin
John C. Morrow
James Milton Irvine, Jr.
Richard K. Gandy
Victor Donatelli
Edward T. Dillon
Walter J. Desmond, Jr.
Lee G. Brown
Arthur C. Miller.

REPORT OF COMMITTEE ON PUBLIC DEFENDER'S LIST

Thomas K. Chase, chairman, has submitted the annual report of Committee on Public Defender's List, for 1934. He shows that the list numbers about 55 members of the Bar in this county, who have charitably volunteered their professional services on behalf of the poor. The report says: "The Committee has approved all of the applications referred to it by the Bar Association and by Public Defender Vercoe. That official desires to have first referred to him, (before action by your Committee) applications of lawyers to be placed on the Public Defender's list.

"This Committee has been of some service to the Units of the Unemployed Co-operative Relief Association through free advice and legal assistance furnished, when required by it.

"The chairman by letter and otherwise, extended to the City Public Defender an offer to help him also. A letter from that official says: 'We are terribly shorthanded, having no one to cover the night court or the traffic division, nor have we the personnel to properly cover the preliminary divisions.'

"The city's poor ought to be represented in preliminary examinations in felony cases, at least. The chairman addressed a letter to Jack W. Hardy, chairman of Junior Barristers, and conferred with him relative to such assistance to the City Public Defender.

"As brief suggestions for the future:

"1. Refer first all applications to the County Public Defender;

"2. Endeavor to secure professional aid for the City Public Defender."

IMPORTANT NOTICE

To the Members of the Los Angeles Bar Association:

You all know that at the present time the Association is conducting an intensive campaign for new members to which there has been a liberal response and members of the Association are each devoting time and effort to make this one of the most successful membership drives that the Association has ever conducted.

Your Committee in charge, believing that each member of the Association desires to take an interest in this drive, are urgently requesting each of you to secure one new member, and you will find at the bottom of this page an application for membership. Cut this membership application out immediately and secure your new member today, forwarding the same to the offices of the Association at once.

Your co-operation in this regard will be hightly appreciated.

EARLE M. DANIELS,
Chairman of Membership Campaign Committee.

Forward application and check to Los Angeles Bar Ass'n., 1124 Rowan Bldg.

Opposition to Judicial Tenure Amendment Met By the Provisions of the Amendment Itself

By Rosalind Bates, of The Los Angeles Bar

WITHOUT EXCEPTION the few lawyers who have gone on record as opposed to Constitutional Amendment No. 98 have revealed in their articles a lack of familiarity with the Amendment itself. Mr. Jack Leonard, chairman of the Lawyers Club Committee appointed to consider the Amendment, admitted quite frankly that he made his report without having read the Amendment. The same is true of that committee as a whole. In Mr. Robert A. Morton's excellently written articles the same lack of familiarity with the bill appears.

He states, "As the matter now stands the entire State electorate will vote the plan into Los Angeles County if the Amendment should be adopted." Had Mr. Morton read the Amendment carefully he would realize that fully two pages are taken up with the provision that after the adoption by the State the Amendment must be approved by a majority vote at the next succeeding general election in the County to which it applies. And that further said County "may withdraw from the provisions of said subdivisions in the same manner as herein above set forth for the adoption thereof." I feel certain that if both Mr. Jack Leonard and his committee as well as Mr. Morton will read the Amendment again that they will come to a different conclusion from the one previously expressed.

Judicial Turn-over Every Ten Years

Mr. Morton questions the mortality tables as to the turn-over in judges. From the time of Rufus Choate in 1853, when he stated "statistics show that a judge lives but ten years on the bench or thirteen at the outside," until today in Los Angeles the figures are the same. There is a practical turn-over due to appointments to higher courts, resignations and deaths that takes place about every ten years.

A further examination of the actual figures upon appointment and election in Los Angeles County reveals the fact that our Bench has increased from 11% to 83% every four years since 1905. The tables are as follows:

Number of Judges of Superior Court in Los Angeles County

May 7, 1879—Constitution of State of California provides for two Judges of Superior Court in Los Angeles County.
February 7, 1887—Increase from two to four judges.
March 11, 1889—Increase from four to six judges.
February 15, 1905—Increase from six to nine judges.
February 11, 1909—Increase from nine to twelve judges.
August 10, 1913—Increase from twelve to eighteen judges.
July 27, 1917—Increase from eighteen to twenty judges.
August 2, 1921—Increase from twenty to twenty-three judges.
June 19, 1923—Increase from twenty-three to twenty-eight judges.
July 29, 1927—Increase from twenty-eight to thirty-eight judges.
August 13, 1931—Increase from thirty-eight to fifty judges.

From 1927 to 1931 there was an increase of 83%; the additional 3% being taken up by the use of judges from other counties. Surely nothing is more logical than that with an increase in civil filings we may look forward to the usual increase in judges in 1937. Unless a principle such as 98 is adopted in Los Angeles County the tax-payers can look forward to a steady increase in the cost of justice.

State Senator Has No Patronage

Again the opponents of the measure are greatly concerned over the patronage given the State Senator. Mr. Morton states "the fortunate candidates would be those who had successfully courted the Senator directly or indirectly." On reading the Amendment we find that the Senator is not allowed to select one man as his candidate. "Any such nomination must be the unanimous action of said board, except that in any case in which the board is unable to act unanimously within thirty days after the accrual of a vacancy, such

nomination may thereafter be made by a majority of the board."

Even Mr. Morton admits that the "Act would eliminate judicial campaigns at the polls" certainly a consummation devoutly to be hoped for.

EVERY LAWYER HAS A PET SCHEME

Isn't it likely that a great deal of opposition lies in Mr. Morton's exclamation: "Then, too, I have a pet scheme." Mr. Saul Kline has a pet scheme. Mr. Morton Booth has a pet scheme. We are contentious by profession and we all have pet schemes that would undoubtedly (at least in our own opinion) be a vast improvement over those suggested by any other attorney.

Constitutional Amendment No. 98 is not a panacea. It is not a judicial patent medicine that will cure everything from rheumatic congestions of the courts to political fever decisions. But it isn't a theory. It has actually passed both Houses of the Legislature and is ready to our hands. It is the contribution of many of the best minds in the State of California and is considered by the American Judicature Society to be the best method under discussion in the United States. Even its few opponents admit that present conditions are intolerable. Amendment 98 is a step in the right direction. Is it too much to ask that a United Bar forget personalities and pet schemes and get behind the first real attempt since 1879 to improve our judiciary?

STATE BAR UNLAWFUL PRACTICE SUITS

The suit of the State Bar, filed in November, 1933, against the Security-First National Bank of Los Angeles, charging unlawful practice of the law, has progressed to the submission of briefs, after argument, on the demurrer of the defendant.

In the second suit by the State Bar against the Bank of America National Trust & Savings Association, a demurrer was filed by the defendant which has not yet been heard.

Speakers Committee Arranges Public Lectures

IN FURTHERANCE of its splendid work during 1933, the Speakers' Bureau Committee of the Los Angeles Bar Association in cooperation with the Sociology Department of the Los Angeles Public Library, has arranged a series of eight lectures in the Central Library lecture room. The first of the series was given on February 14, by Judge Leon R. Yankwich, whose subject was "The Colonies Agree."

On February 28, Professor Charles E. Carpenter, lecturer on Constitutional Law at University of Southern California, spoke on "The Supreme Court Takes Its Place," and on March 14, Arthur L. Syvertson's subject was "The Federal Government Supreme."

On March 28, Judge Harold Landreth of the Municipal Court, will discuss: "The American League of Nations;" on April 11, Rollin L. McNitt, Esq., "Protection for Property and Contracts;" April 25, W. H. Anderson, President of the Los Angeles Bar Association, on "Protection for Liberty and Free Speech;" on May 9, "Interstate Commerce Grows," by Joseph L. Lewinson, Esq.

The final of the series will be given on May 23, by Professor Charles E. Carpenter, lecturer on Constitutional Law, University of Southern California, whose subject is "What Of Today and Tomorrow?"

Mr. Charles E. McDowell is Chairman of the Speakers' Bureau Committee.

Assembly Constitutional Amendment No. 98

ARGUMENT AGAINST ITS ADOPTION

By Edward Winterer, of The Los Angeles Bar

Shall the voters of Los Angeles County be disfranchised that the Judges of the Superior Court of said County, some thereof alleged by the proponents of Constitutional Amendment No. 98, to be unqualified, may have a life tenure of office?

I AM NOT in accord with such proponents. Many of our Superior judges are eminently qualified and are an honor to the bench and the state.

Under the provisions of the amendment, an incumbent nominates himself to succeed himself. No other nominations or candidates are allowed. If the incumbent fails to nominate himself, then the Governor nominates a candidate in his place from one to three selected by the Chief Justice of the Supreme Court, the Presiding Justice of the District Court of Appeal and the State Senator of said county. Such appointed nominee shall have no opposition. He runs against himself alone and not on his own record, as he then has none. If the sole candidate, whether incumbent or nominee, is not elected there is a vacancy which the Governor is empowered to fill from the persons recommended by said Chief Justice, Presiding Justice, and Senator. The appointee holds office, as the case may be, from four years and ten months to six years and nine months.

Items of Objection

I am opposed to the adoption of the said amendment for many reasons, particularly the following:

1. If it be true, as asserted by the proponents of said amendment, that a number of these judges of our Superior Court are not qualified or competent for the position, then the natural, logical, direct and inevitable result of the operation of the said amendment will be to give the present incumbent judges, including any unqualified judge, a life tenure of office, to the injury and detriment of the administration of justice. If it be not true, then there is no need for any change.

Such proponents strenuously advocate the adoption of said amendment on the claim that it will give better judges, elevate the judicial standard and advance the administration of justice. The effect of the amendment will be just the opposite. It will prevent us from getting better judges, it will lower the judicial standard, maintain and continue mediocrity and incompetency and impair the administration of justice.

2. The said amendment provides no efficient or adequate method of getting rid of unqualified judges, either as to such which may be now on the bench or as to those who may hereafter be appointed. The self-nomination of an incumbent to be the sole candidate without any opposition whatever deprives the pretended election provided for in the amendment of all of the essential elements of an election, in that there is no choice, no competition, no comparison of one candidate with another. Such pretended election is a mere farce, a form without substance, and a misleading and deceptive subterfuge and camouflage. The incumbent runs against himself and his own shadow. The people will be given a stone for bread, a shadowy serpent for meat.

3. The said amendment will operate for the direct and immediate benefit of the incumbent, whether competent or incompetent, and not for the benefit of the people or for the better administration of justice. It grants to the incumbent judge, whether competent or incompetent, the sole and exclusive right of candidacy, excludes all competition and makes incumbent incompetency take precedence and priority over non-incumbent competency. Incumbency, irrespective of competency or quality, is made an element of superiority and clothed with a vested right in and to a judicial office. Such vested right attached to mere incumbency approaches the right of heredity. Incumbency, in itself, is made the controlling principle, and overrides fitness, quality, competency and superior excellence.

4. The amendment, by its express provisions and in its spirit and intent lowers the judicial standard instead of elevating the same. It tends to maintain and perpetuate in office, not the best judges, which

can be procured, but the least qualified; those who by the margin of a single vote in a pretended election, without form or substance, with all choice, comparison, competition and opposition forbidden, may escape defeat. It substitutes monopoly for competition, incompetency for competency, mediocrity for merit and smothers and destroys advancement.

5. The amendment is misleading, inconsistent, self-contradictory, benefits the office holders, whether competent or not, all at the expense of and detriment to the people and to the injury of the administration of justice. In one sentence it fixes the term of office for six years; in another it empowers the governor of the state to fill a vacancy, however occurring, until the commencement of the next term. The duration of such intervening time from the day of appointment to the commencement of such term varies from four years and ten months, the shortest time, to six years and nine months, the longest time. It fixes the duration of time at: "The first general state election after the first day of April, next succeeding the accrual of such vacancy." Such state election as to a vacancy occurring and filled for instance, April 2, 1936, takes place on November 3rd, 1942. The first judicial term following this election commences January 4, 1943. Thus the duration of the appointive term is *six years, nine months and two days.*

The untried novice appointee is foisted on the people for a term longer than the best qualified incumbent judge. It may be that such appointee is so fresh and green that he needs time to mature and become qualified—at the expense of the people and the administration of justice.

The amendment expressly fixes one term of office for appointees and another for those submitting to an election.

6. If it be true that the standard of quality and efficiency of our judiciary has been lowered, then such lowering must be through and on account of the appointive system and not the elective system. As to the fifty judges now on our Superior bench, thirty-three or 66% thereof were appointed directly to the Superior Court; nine of the said fifty—or 18% thereof, were first appointed to a municipal or lower court and thereafter elected to the Superior Court; and only eight, or 16% of the said total, not originally appointed to any judicial position, obtained office by election.

It is significant that the said amendment applies only to the County of Los Angeles, and to no other part of the state where judges, generally, have obtained office through election.

It is also significant that of the forty-eight states of the Union all have the elective system, except eight of the original thirteen Colonies, and as to such eight the system is the outgrowth of the common law and the English system. The Colonies were then, particularly as to the judiciary, still in their swaddling clothes.

The appointive system has been applied to the Superior Court of Los Angeles County in very high degree, and more than in any other part of the state. It seems clear that this is the cause of the claims of said proponents as to the inferior qualifications of judges of our court. If the appointive system has brought us to the necessity of change why advocate it as a means of reform?

Importunities and Influences

7. The said amendment will make and constitute the Presiding Justice of the District Court of Appeal and the Chief Justice of the Supreme Court members of a judicial employment agency and political headquarters. It will expose them to secret and improper importunities and influences involving also matters pertaining to their own elective offices. This reason applies with full force to those who shall hereafter seek to be elected to such positions on the said appellate courts. The people have unlimited confidence in the present Presiding Justice of the District Court and the Chief Justice of the Supreme Court.

8. It will give to the said Presiding Justice and the said Chief Justice each two distinct duties under the Constitution; one purely judicial, the other purely political, the last being incompatible with the free and unhampered exercise of the former. Conferring political duties on an appellate court, or any of its justices will entangle the same in the mesh of politics and impair the very high respect which has always been accorded to our appellate courts and the decisions of the same. The said amendment in its direct effect will lessen the respect that should be accorded to

courts of last resort, which should at all times be kept free and clear from political pressure, suspicion or entanglements.

9. It will tend to make our judiciary self-perpetuating, form a judicial oligarchy and bring the elements of caste and privilege into our judicial, civic, social and political life. What respect will the people have for a self-nominating, self-appointing and self-continuing judiciary? Such judiciary, so constituted, will be in direct conflict with the sovereignty of the people, the basic principle of American government.

10. It will tend to make the one recommended for judicial appointment by the Presiding Justice of the District Court of Appeal and/or the Chief Justice of the Supreme Court a policical child of the one so recommending him. If such child be appointed as a judge of the Superior Court, an appeal from a decision of such appointee, will be in effect an appeal from a policical son to his political father to the distrust and suspicion thereby created and to the detriment of the administration of justice. Questions of favoritism will arise from the situation thus created.

Lower Standard

11. It will lower the standard of our Superior Court. It will inject into the same the element of secret politics, expose the same to pressure of special and selfish interests, the wiles and circuitous manipulations of fixers and all those who wish to evade or side-step the law or get from our courts something to which they are not entitled.

12. It will turn the personnel of our Superior Court into a frozen asset of such competency or incompetency as the proponents of the said amendment now claim that it has. It will deprive the people of their present inherent constitutional rights to obtain at all times the very best qualified men for judges of our Superior Court. The people of Los Angeles County have suffered five years of terrible depression and as a result thereof have accumulated a tremendous burden of frozen assets. Heaven forbid that to such tremendous burden we add a frozen judiciary.

13. It will disfranchise the people for no good to them, to the country, or to the administration of justice. On the contrary, it will be an injury and detriment to all, merely that such asserted unqualified and incompetent incumbents and those who shall hereafter be appointed, may have a life tenure of office.

The right of francise has been wrested from kings and tyrants with centuries of blood and treasure. With immeasureable sacrifice, the people have established on this continent the principle that they are the foundation and source of all power.

14. It will constitute a base and craven surrender of the sovereignty of the people, turn over the selection of the judiciary, the last bulwark of the rights and protection of the people, and expose the same to the secret and evil influences of special and selfish interests, big business, wire pulling, bargaining, corporate greed, corporations—domestic and foreign—the under-world, organized crime, and all those who seek or may seek benefits and privileges not permitted by law. It will be the Hindenburg line of entrenched privilege—insolent and defiant.

It will substitute baneful, deadly secrecy for open and healthful publicity. Judicial candidates may be recommended, nominated and appointed but the people will not know just why, when or where. They will know absolutely nothing of the original source of the facts, circumstances or influences that ultimately produce the final result.

15. It will turn the selection of our Superior judges over to a tribunal of four, three of whom under the Constitution of the state may not and are not required to be residents of Los Angeles County, to-wit: the Presiding Justice of the District Court of Appeal, the Chief Justice of the Supreme Court, and the Governor of the state. Neither of these will necessarily be voters of our county. Each will have less means or opportunities of knowledge of the actual and necessary qualifications of a judicial candidate than the voters of the county. It violates the basic principle of American government: "No taxation without representation."

Declared Basically Unsound

16. The said amendment is basically unsound in that the State Senator, Presiding Justice of the District Court of Appeal, the Chief Justice of the Supreme Court and even the Governor of the state, are, as individuals and electors, assumed

not to have sufficient ability or capacity to even cast a vote for a judge of the Superior Court, but, on the other hand, in direct opposition to the first assumption, they are each assumed to have such enormous knowledge and wisdom, far exceeding the collective knowledge and wisdom of all of the voters in the county as to the qualifications of judicial candidates. These two assumptions, on the face of the amendment, are self contradictory and both cannot be true. Such absurdity should not out of respect for the people of the state, be written into their organic law.

17. As the electors of Los Angeles county now have the constitutional right and are deemed to have sense enough to vote for the Governor, a Chief Justice of the Supreme Court and a Presiding Justice of the District Court of Appeal, all of whom may be non-residents of the county, as to whose qualifications they are less able to determine than as to the qualifications of a candidate for the Superior Court, why should they not have sense enough to vote for such candidates? Because it would be against a life tenure for competents and incompetents on the bench and make it more difficult for selfish or special interests or those who wish the Government to be subservient to them to establish and maintain control.

It is claimed that the public interests will be served by relieving the Superior judges of electioneering. That some must now demean themselves by kissing babies. But as to this it is safer and far more wholesome for the administration of justice that a judicial candidate kiss the cheeks of an innocent child than the foot of a state Senator.

18. The amendment is viciously undemocratic and un-American. It constitutes an expression of ingratitude and an offense to the great sacrifices which have been made, the hardships endured and the lives that have been lost in the toilsome and struggling years that are gone to establish and forever maintain in this land a government *of* the people, *by* the people, and *for* the people. We should never forget nor dishonor our heroic and honored dead.

19. It will subject the State Senator to the most serious temptations—as to which there is and can be no assurance that he may or can resist—as to the payment of his campaign expenses and other considerations. It will give such Senator something which may be given, sold, or granted, and to judicial candidates, to selfish and special interests to privilege and the under-world, something to demand, buy or receive, not for the better administration of justice but for themselves. It will put the office of State Senator on the auction block of temptation, and load the situation with danger and dynamite.

20. It will not give us an independent judiciary except one independent of the people, and such independence will be in direct proportion to dependence upon those whose interests are against the people.

Hire and Fire

21. The amendment will absolutely deprive the people, the source and foundation of all of the sovereign power of the state, of their present inherent and constitutional right, at all times, to "hire and fire" any judge of the Superior Court, or any other officer, legislative, executive or judicial, and to be continuously in full, complete and absolute control of their Government and each and every part and agency thereof.

The people of this state are not ready to Hitlerize our judiciary. The Government established by our fore-fathers, preserved by our fathers, is good enough for us. We need no Fascism. We need no guardians. We are a sovereign and competent people.

If there is to be any change to secure better or the best judges it will and must be done under the elective system, through and by means of which the people shall retain direct and efficient control. It is an easy and simple matter to establish an elective tribunal from the voters of Los Angeles County to nominate judicial candidates. It is an easy matter to divide the county into districts. It is an easy matter in many and various ways and means to make it easier for the people to determine the qualifications of judicial candidates without any loss of control or sovereignty, without surrender of any of their rights to selfish or special interests and without giving life tenure to judges, whether qualified or unqualified, some perchance arbitrary, ossified or obsolete. This country belongs to the people and not to any of its office holders.

THE RIGHT OF A SURETY TO INJUNCTIVE RELIEF

(Continued from page 157)

pro-rata, and is to be distributed among them equitably according to their respective claims. Mere diligence in prosecuting a claim against such a fund will not entitle the prosecuting (procuring) claimant to a priority of payment. The fund can therefore be reached only by an action in equity prosecuted in a court possessing equitable jurisdiction.' "[19]

The court further declared that the court below was premature in ordering the surety to pay the sum of $13,614.00 to certain claimants as their pro-rata share because there had been no consideration of all the claims and no accurate determination of the correct pro-rata share of *every* claimant. The court feared that such premature payment might be an overpayment resulting in loss to the surety. In support of this argument, the court cited the case of *Commonwealth vs. City Tr. S. Dep. & Sur. Co.*[20] which holds that when a surety pays a judgment on a bond, knowing of another outstanding claim, which makes the total of claims in excess of the penalty of the bond, even though such payment is made to avoid execution, the surety is liable to the other claimants for their pro-rata share as if all claimants were receiving equal distribution, regardless of whether or not this requires a total payment in excess of the penalty.

Thus, the court in the Commonwealth case holds not only that the surety has a right to equitable relief but that it has an affirmative *duty* to seek injunctive relief even after judgment and threatened execution against it.

Other Cases

There are numerous other cases in which the court granted equitable relief in similar situations.[21]

In addition to the difficulties of theory discussed above, various other objections have been raised to the exercise of this jurisdiction by a court of equity. It is said that the suit by the surety is an attempt to interplead which is improper because the surety is not merely a stakeholder but often, although not always, denies the validity of all claims and thus has interests adverse to the claimants. However, in addition to actions in interpleader there is a separate and well-recognized class of "actions in the nature of interpleader" in which the strict rules of interpleader do not apply, and the plaintiff need not be a mere stakeholder.[22]

Another form of the same objection is that most of the authorities for relief are cases where the plaintiff admitted liability. To a certain extent this is true. Many of the decisions do not make clear whether the plaintiff disputed the claims or not, but it is certain that such was the case in at least some of the cases cited.[23]

Another objection sometimes raised is that there is an adequate remedy at law in that the court, in a separate action by one of the claimants, has the power to order other parties necessary for a "complete determination of the controversy"[24] brought into the action. However, there is no authority applying this code section to the situation here.

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(19) At p. 842.

(20) 73 Atl. 425 (Pa.).

(21) Supervisors of Saratoga County vs. Deyoe, 77 N. Y. 219; Illinois Surety Co. vs. Mattone, 122 N. Y. S. 228; American Surety Co. of New York vs. Lawrenceville Cement Co., 96 Fed. 25; United States Fidelity and Guaranty Co. vs. California Arizona Construction Co., 186 Pac. 502 (Ariz.); Aleck vs. Jackson, 23 Atl. 760 (N. J.); Brunetti vs. Grandi, 104 Atl. 139 (N. J.); cases cited supra, note 13. See also: Pfohl vs. Simpson, 74 N. Y. 137 and Hayward & Clark vs. McDonald, 192 Fed. 890, at 893.

(22) The case of Aleck vs. Jackson, supra, note 21 is selected by James Barr Ames, in his Cases in Equity Jurisdiction, p. 45, as a typical action in the nature of interpleader. Ames cites many other such cases in note 1, p. 46.

(23) Illinois Surety Co. vs. Mattone, and Supervisors of Saratoga County vs. Deyoe, supra, note 21.

(24) Code of Civil Procedure, Sec. 389.

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